

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 96-0230 ITC
Indiana Corporation Income Tax
For The Tax Periods: 1990 through 1994

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ISSUE

Indiana Corporation Income Tax: Gross Income Tax

Authority: IC 6-2.1-1-2; IC 6-2.1-2-2; 45 IAC 1-1-8; 45 IAC 1-1-10

Taxpayer protests amounts included in gross receipts.

STATEMENT OF FACTS

Taxpayer rents and leases audio/visual equipment that is primarily used for meetings, conferences, and conventions. Taxpayer primarily services hotels and convention centers. Taxpayer is a D.C. corporation that is headquartered in Maryland. Taxpayer provided audio/visual services for Indiana hotels during the above tax periods. An audit was completed on January 30, 1996 for the above tax periods. Taxpayer filed a timely protest and an administrative hearing was conducted on February 2, 1999. The Department issued Letter of Findings Number 96-0230 ITC on March 8, 1999. That Letter of Findings sustained the taxpayer to the extent that taxpayer could verify the finding by documentation. A supplemental audit was completed on June 10, 1999 that determined the taxpayer had not verified the finding. Thereafter, taxpayer requested a rehearing. The Department granted a rehearing on September 30, 1999. An administrative hearing was conducted via telephone conference on October 7, 1999. Additional facts will be provided as needed.

DISCUSSION

In Indiana, an income tax, known as the gross income tax, is imposed upon the receipt of:

- (1) the entire taxable gross income of a taxpayer who is a resident or domiciliary of Indiana; and
- (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana.

IC 6-2.1-2-2. Taxpayer received taxable gross income by providing audio/visual services to Indiana hotels. Taxpayer had agreements with Indiana hotels that allowed taxpayer to rent audio/visual equipment to the hotel's guests. In each case, taxpayer and hotel agreed that:

- (1) taxpayer would pay the hotel commissions on all equipment rentals;
- (2) taxpayer would submit a summary invoice each month to the hotel; and
- (3) the hotel would pay taxpayer the invoiced amount, less commissions

Audit correctly classified the hotel's portion of the rental income as constructive receipts and included the entire amount in taxpayer's gross income. Gross income means the entire amount of receipts received by a taxpayer, *actually or constructively*. 45 IAC 1-1-8 (emphasis added). Constructive receipts are defined as an item of gross income which is not actually received by the taxpayer but is: (1) credited to the taxpayer, (2) made available for the taxpayer's withdrawal, (3) paid to another *for the taxpayer's direct benefit*, or (4) income to which the taxpayer is entitled. 45 IAC 1-1-10 (emphasis added). In essence, the hotel's guest pays the hotel for the taxpayer's direct benefit. Taxpayer simply bills the hotel each month and does not have to bill each of the hotel's guests. The entire amount billed to the hotel's guests each month is paid to another for the taxpayer's benefit and thus, constructively received by taxpayer.

Furthermore, "no deductions from a taxpayer's gross income may be taken for . . . *commissions paid*." IC 6-2.1-1-2 (emphasis added). Taxpayer's invoices to the hotel bill by line item: taxable rentals, nontaxable rentals, sub-rentals, set-up, labor, and *less commission*. As evidenced by taxpayer's invoice to the hotel, the taxpayer pays commissions to the hotel. By statute, such commissions cannot be deducted from taxpayer's gross income. Therefore, the Department finds that the amounts protested were properly included in taxpayer's gross income.

FINDING

Taxpayer's protest is denied.